

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-CV-00515

MICHAEL CROWELL,

Plaintiff,

v.

ROY COOPER, Governor of North
Carolina, in his official capacity only;
ROBERT B. CORDLE, Chair, State
Board of Elections, in his official capacity
only; STELLA ANDERSON, JEFF
CARMON III, DAVID C. BLACK, and
KEN RAYMOND, members, State Board
of Elections, in their official capacities
only;

Defendants,

and

PHILIP E. BERGER, President Pro
Tempore, North Carolina Senate, and
TIMOTHY K. MOORE, Speaker, North
Carolina House of Representatives, in
their official capacities only,

Defendant-Intervenors.

**DEFENDANT-INTERVENORS' MOTION TO DISMISS AMENDED
COMPLAINT PURSUANT TO RULES 12(b)(1) and 12(b)(6)**

Defendant-Intervenors Philip E. Berger, in his official capacity as
President Pro Tempore of the North Carolina Senate and Timothy K. Moore,

in his official capacity as Speaker of the North Carolina House of Representatives, by and through undersigned counsel and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.3, hereby move this Court to dismiss Plaintiff's Amended Complaint, Dkt. 63, for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.¹ In support of their Motion, Defendant-Intervenors refer to the arguments expressed in the State Defendants' Memorandum of Law in Support of Motion to Dismiss, Dkt. 67.²

WHEREFORE, Defendant-Intervenors respectfully request that this Court dismiss Plaintiff's Amended Complaint and grant such other and further relief as the Court deems appropriate.

¹ Contemporaneously herewith, Defendant-Intervenors have moved to withdraw their intervention, and do not seek to prejudice that motion by also responding to the Amended Complaint with a Rule 12 with a motion to dismiss. If the motion to withdraw is not permitted, Defendant-Intervenors ask this Court to rule on their motion to dismiss similar to the State Defendants' Motions to Dismiss (*see* Dkt. 66).

² Having litigated against the Governor regarding gubernatorial control over the Board of Elections, Defendant-Intervenors do not necessarily agree with the arguments of the State Defendants regarding *Cooper v. Berger*, 370 N.C. 392, 809 S.E.2d 98 (2018) as stated in the Memorandum. But this disagreement is not relevant to the dismissal of Plaintiff's Amended Complaint.

Respectfully submitted this the 13th day of May, 2019.

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By: /s/ D. Martin Warf

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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